

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DAVID A. HOSKINS,)	
)	
Plaintiff,)	
)	
v.)	1:13CV978
)	
YOLANDA M. GAUSE, et al.,)	
)	
Defendant(s).)	

ORDER AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Plaintiff, a prisoner of the State of North Carolina, submitted a civil rights action pursuant to 42 U.S.C. § 1983, together with an application to proceed *in forma pauperis*. The form of the Complaint is such that a serious flaw makes it impossible to further process the Complaint. The problem is:

1. Pursuant to the Prison Litigation Reform Act, Plaintiff may no longer proceed *in forma pauperis* in this Court unless he is under imminent danger of serious physical injury. The Act provides that:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). Plaintiff admits in his Complaint (Docket Entry 2, § II(B)) that he previously filed three suits which were dismissed on the grounds that they were frivolous, malicious, or failed to state a claim upon which relief could be granted. The Court's own research confirms this. See

Hoskins v. Lewis, No. 5:11-ct-03174-FL (EDNC Dec. 21, 2012) (unpublished order dismissing case for failure to state a claim); Hoskins v. United States Congress, 5:11-ct-03186-BO (EDNC, Mar. 22, 2012) (unpublished order dismissing case as frivolous); Hoskins v. Freeman, No. 5:11-ct-03171-F (EDNC, Jan. 6, 2012) (unpublished order dismissing case as frivolous). Therefore, Plaintiff cannot proceed *in forma pauperis* unless he is under imminent danger of serious physical injury. Plaintiff does raise allegations regarding an incident during which another inmate stabbed him while he was handcuffed. However, this incident is in the past and Plaintiff does not allege that he is still in danger from this inmate. (Docket Entry 2, § V.) Further, Defendants are all officers or administrators at Scotland Correctional Institution. (*Id.*, § IV(B).) However, Plaintiff is currently housed at Bertie Correctional Institution (*id.*, § IV(A)), which means that he is not even at the same prison where the incidents alleged in the Complaint occurred. He clearly is not currently facing imminent danger of serious physical injury based on the actions of any of the Defendants. He cannot proceed *in forma pauperis* in this matter pursuant to U.S.C. § 1915(g).

Consequently, the Complaint should be dismissed, but without prejudice to Plaintiff filing a new complaint, on the proper § 1983 forms, and accompanied by the \$400.00 filing fee. To further aid Plaintiff, the Clerk is instructed to send Plaintiff new § 1983 forms, instructions, and a copy of pertinent parts of Fed. R. Civ. P. 8 (*i.e.*, Sections (a) & (d)). *In forma pauperis* status is granted for the sole purpose of entering this Order and Recommendation.

Plaintiff also filed a Motion for Appointment of Counsel. (Docket Entry 4.) In light of the recommendation that this case be dismissed, that Motion will be denied.

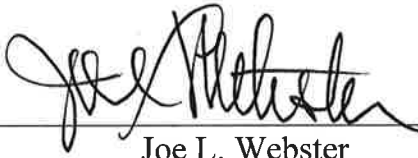
IT IS THEREFORE ORDERED that *in forma pauperis* status is granted for the sole purpose of entering this Order and Recommendation. The Clerk is instructed to send

Plaintiff § 1983 forms, instructions, and a copy of pertinent parts of Fed. R. Civ. P. 8 (*i.e.*, Sections (a) & (d)).

IT IS FURTHER ORDERED that Plaintiff's Motion for Appointment of Counsel (Docket Entry 4) is DENIED.

IT IS RECOMMENDED that this action be filed and dismissed *sua sponte* without prejudice to Plaintiff filing a new complaint, on the proper § 1983 forms, and accompanied by the \$400.00 filing fee.

This, the 4th day of November, 2013.



Joe L. Webster
United States Magistrate Judge